IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 18 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALABHAI RAMBHAI MIYA DARBAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 18 of 2002

MR PN BAVISHI for Petitioners No. 1-2

MR B D Desai, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 16/01/2002

ORAL JUDGEMENT

This Criminal Revision Application under section 397 of the Code of Criminal Procedure, 1973 (for short 'the Code') has been brought by the the present

petitioner above named, who were original accused no.1 and 2 before the learned Judicial Magistrate First Class, Junagadh in criminal case No.11814/89. They were tried for offence punishable under sections 143, 147, 148, 149, 326, 202 and 504 of IPC as well as for offence under section 135 of Bombay Police Act.

2. The prosecution case before the trial court was that on 26.10.1989, the present two applicants along with other accused persons constituted unlawful assembly with a common object of causing grievous hurt to informant Govind Laxmanbhai. It is also alleged that they carried deadly weapons like stick, axe etc. That they caused grievous hurts on the head as well as on leg by means of axe and other weapons and committed the said offence. It is also alleged that though there was a notification of the District Magistrate for preventing persons from carrying weapons in public places, the two petitioners herein carried weapons in public place and committed offence under section 135 of the Bombay Police Act also.

3. On receiving injury, the injured person was taken to the hospital and treatment was given to him. Thereafter, FIR was filed and investigation was undertaken and at the close of investigation, charge sheet was filed and it was registered as Criminal Case No.11814/89.

4. Learned JMFC, Junagadh provided copies of police investigation papers to the petitioners. Charge was framed and it was read over and explained to the petitioners and other accused persons. They pleaded not guilty and therefore evidence was recorded. At the conclusion of the evidence, further statements of the petitioners and other accused persons were recorded under section 313 of the Code. The petitioners pleaded that they have not committed the offence and false case was fabricated against them. After hearing the arguments, the learned Magistrate found that the present petitioners were guilty of offence punishable under sections 143, 147, 148, 149, 326 of IPC along with other accused persons and for the said offence, they were directed to undergo R.I. for one month. They were also directed to pay fine of Rs.100/-. Then for the offence punishable under section 147, 148 and 149, they were awarded R.I. for six months and they were directed to fine Rs.500/-. So far as the offence punishable under section 326 of IPC is concerned, the two petitioners and other two accused persons were directed to suffer R.I. for 27 months and they were directed to pay fine of Rs.500/-.

5. So far as offence punishable under sections 504 and 202 IPC are concerned, the petitioners and other accused persons were acquitted. Same way, they were acquitted for the offence punishable under section 135 of the Bombay Police Act.

6. Feeling aggrieved by the said judgment and conviction order of the learned JMFC, Junagadh dated 29.3.1996, the petitioners and two other accused persons preferred Criminal Appeal No.17/96. After hearing the appeal, the learned Addl.Sessions Judge partly allowed the same. So far as the first petitioner is concerned, his conviction for offence under section 326 of IPC was confirmed but his jail sentence has been reduced to 12 months with imposition of fine. So far as petitioner no.2 is concerned, his sentence and conviction under section 326 of IPC have been confirmed. So far as the remaining two accused persons are concerned, they have been acquitted. Even the present two petitioners have been acquitted from offence punishable under sections 143, 147, 148 and 149 of IPC.

7. It appears that along with the said appeal original informant has preferred Criminal Revision No.61/96 for enhancement of punishment which was also dismissed by the said Court by a common judgment and order dated 31.12.2001. Feeling aggrieved by the said judgment and order of the learned Addl.Sessions Judge, Junagadh, the petitioners herein have preferred this revision application before this court.

8. It has been mainly contended here by the convicts that the two courts below have committed serious illegality in convicting them for offence punishable under section 326 of IPC. It has also been contended that there was no probability of presence of the eye witness present on the spot. That in the eye of law, the appreciation of evidence produced before the trial court is illegal and, therefore, the judgment and orders or the two courts below are illegal and erroneous and deserve to be set aside. The petitioners have, therefore, prayed that the present revision application be allowed and the judgment and conviction orders recorded by the two courts below be set aside and the petitioners be acquitted from the offence under conviction and they may be set at liberty forthwith.

9. On presentment of this revision application, I heard Mr P N Bavishi, learned Advocate for the petitioner and Mr B D Desai, learned APP for the State. In fact, learned Advocate for the revision petitioner has taken me

through the evidence on record in order to argue that the judgments and conviction orders are illegal and erroneous. Learned Advocate for the petitioner has first contended that the injuries sustained by the injured Govind Laxmanbhai were not grievous and, therefore, there could not be any offence punishable under section 326 of IPC.

10. Now, on going through the evidence of Govind Laxmanbhai and the evidence of Medical Officers, Gordhan Kala and Govindbhai Muljibhai - Exhs. 51 and 44 respectively, it is absolutely clear that informant Govind Laxmanbhai had sustained fracture on his leg. Thus injury has been caused by the blunt part of the axe. This shows that an iron portion had struck on the leg of the informant causing fracture. Learned Advocate for the petitioner has taken me through the definition of "grievous hurt" found in section 320 of IPC, which clearly indicates that whenever there is a fracture, it amounts to grievous hurt. It is clear that the grievous hurt sustained by Govind Laxmanbhai on his leg is on account of axe blow struck by the second petitioner. When deadly weapon has been used resulting in fracture, it would amount to any injury caused by deadly weapon resulting in grievous hurt. In that view of the matter, the offence would clearly fall within four corners of section 326 of IPC. Even so far as the first petitioner is concerned, he has also used blunt part of the axe. According to the medical evidence, the injured sustained an injury upto born deep on his head. Looking to the nature of injury sustained by injured on his head and looking to the weapon used (axe) by the first petitioner for the purpose of inflicting this injury, it is very clear that the two courts below have not committed any illegality in holding that this petitioner is also guilty of offence under section 326 of IPC.

11. Then, there is oral testimony of Govind Laxmanbhai himself. It is very clearly deposed by him that the two injuries were caused by petitioners no.1 and 2. His evidence is supported by the Medical Officers who had been examined before the trial court. Evidence of Medical Officers has been supported by the injury certificate which have also been produced on record. Apart from this, there are further corroborative evidence supporting the said evidence of Govind Laxmanbhai.

12. It is therefore, clear that there was sufficient material before the two courts below for holding the petitioners guilty for the offence punishable under section 326 of IPC. Therefore, conviction of these two

petitioners cannot be doubted or challenged in this revision. This is not an appeal but it is a revision. Therefore, the powers of reappreciation of evidence are very limited. It is not shown that the two courts below have committed any illegality in the appreciation of evidence. No illegal evidence has been taken into consideration and no admissible evidence has been omitted from consideration. In that view of the matter, no illegality has been committed by the two courts below. There is no reason to interfere with the findings of fact recorded by the two courts below. It is to be seen that while dealing with the appeal, the learned Addl.Sessions Judge has properly reappreciated the evidence on record and in so doing he has acquitted even the present petitioners from offence punishable under sections 147, 148, 149 of IPC. By doing so, the learned Addl.Sessions Judge has reappreciated the evidence and has taken a different view from the view adopted by the learned Magistrate. Even on the point of quantum of punishment, the learned Addl.Sessions Judge has reduced the jail sentence imposed upon the first petitioner from 27 months to 12 months. Looking to the nature of injury caused by this petitioner, there appears to be proper consideration by the learned Addl.Sessions Judge even with respect to the quantum of punishment imposed upon the first petitioner.

In above view of the matter, I find no substance in this revision and consequently, this revision application deserves to be dismissed.

For the foregoing reasons, this revision application is ordered to be dismissed.

16.1.2002 [D P Buch, J.]
msp